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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/295,690	04/21/1999	JEROME A MOUTON JR.	081862,PI122	7482
8791	7590	01/06/2009	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040			FLEURANTIN, JEAN B	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/295,690	<b>Applicant(s)</b> MOUTON ET AL.
	<b>Examiner</b> JEAN B. FLEURANTIN	<b>Art Unit</b> 2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

- 1) Responsive to communication(s) filed on 29 December 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 & 3-17 is/are rejected.
- 7) Claim(s) 2 and 6 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No.(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This in response to remarks dated 12/29/2008.

The following is the current status of claims:

Claims 1-17 remain pending for examination.

***Response to Arguments***

Applicant's arguments, filed on 12/29/2008, with respect to 35 U.S.C. § 103(a) rejections of claims have been fully considered but they are not persuasive. Because the combination of APA in view of USPNo. 5,806,078 (Hug) discloses the claimed limitations set forth in the rejection.

However, the arguments with respect to claims 2, 6, 10 and 15 are persuasive. Thus, the 35 U.S.C. § 103(a) rejection(s) of claims 2, 6, 10 and 15 has (have) been withdrawn.

Claims 2, 6, 10 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Upon further consideration, claims 9-17 are rejected under 35 U.S.C. § 101 set forth in the rejection.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

As per independent claims 9 and 13

The independent claims 9 and 13 are directed to an apparatus. The claimed steps are not being performed by any form of computer hardware component. The claim is recited a series steps without having a memory and processor to process the steps as claimed. The claimed, "means" fails to fall with one of four statutory categories of invention, process, machine, manufacture and composition, and is software per se.

The dependent claims are rejected under the same rational.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7-9, 11-14, 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant background, admitted arts, APA ("APA") in view of USPNo. 5,806,078 issued to Hug et al., ("Hug").

As per claim 1, APA discloses "a machine computer-implement method for upgrading a database" [i.e., database upgrading, previous versions; page 1, lines 18-19], "comprising: updating, by the computer a database update message from a first version to an upgraded version" [i.e., version database is a specific schema and the specific data in the structures, databases are embodied in a series of versions, each with a changed schema and new data elements. A new version of the database is generated from an old one by upgrading its schema and mapping its data to the new schema. Database software generally support upgrading from any of several previous versions; see page 1, lines 13-19].

"wherein updating comprises receiving an update message having a first version format; and based on the update message until a final update message having an upgraded version format is generated" [i.e., in a redundancy environment, upgrading is sometimes performed by upgrading a mirror image database to the new version and then at the appropriate time switching to use the mirror image as the primary database, process, upgrading is performed by receiving database update messages from a previous version and mapping them into the schema of the new version, an empty database structure conforming to the schema of the new version is created to accept these mappings; see page 2, lines 1-8];

and "applying, by the computer, the, final revised update message to the database to write an upgraded version of the schema of the database" [i.e., databases are embodied in a series of versions, each with a changed schema and new data elements; see page lines 15-16].

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APA fails to explicitly disclose *chaining through one or more intermediate upgraded versions* (see Hug col. 6, lines 38-41); *repeatedly generating a revised update message having a next most recent version format*. However, Hug discloses *chaining through one or more intermediate upgraded versions; repeatedly generating a revised update message having a next most recent version format* (see Hug col. 38-60). It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the method of APA by chaining through one or more intermediate upgraded versions; repeatedly generating a revised update message having a next most recent version format as disclosed by Hug (see Hug col. 6, lines 22-27). Such a modification would allow the method of APA to provide improved means for comparing different document versions (see Hug col. 4, lines 55-56), therefore, improving the performance of the method and apparatus for upgrading a database in a redundant environment by release chaining.

As per claim 3, APA discloses "the update message includes a set of records for a database in the first version" [see page 1, lines 15-18].

As per claim 4, APA discloses "the set of records for the database in the first version is a complete set of records for the database" [see page 1, lines 15-18].

As per claim 5, the limitations of claim 5 are similar to claim 1, therefore, the limitation of 5 are rejected in the analysis of claim 1, and this claim is rejected on that basis.

As per claim 7, APA discloses "the update message includes a set of records for a database in the first version" [see page 1, lines 15-18].

As per claim 8, APA discloses "the set of records for the database in the first version is a complete set of records for the database" [i.e., databases are embodied in a series of versions; see page 1, lines 15-18].

As per claim 9, the limitations of claim 9 are similar to claim 1, therefore, the limitation of 9 are rejected in the analysis of claim 1, and this claim is rejected on that basis.

As per claims 11 and 12, the limitations of claims 11 and 12 are similar to claims 7 and 8, therefore, the limitations of 11 and 12 are rejected in the analysis of claims 7 and 8, and these claims are rejected on that basis.

As per claim 13, the limitations of claim 13 are similar to claim 1, therefore, the limitation of 13 are rejected in the analysis of claim 1, and this claim is rejected on that basis.

As per claims 14 and 16-17, the limitations of claims 14 and 16-17 are similar to claims 1 and 3-4, therefore, the limitations of 14 and 16-17 are rejected in the analysis of claims 1 and 3-4, and these claims are rejected on that basis.

***Allowable Subject Matter***

Claims 2, 6, 10 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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**CONTACT INFORMATION**

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is (571)272-4035. The examiner can normally be reached on 10:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E. BREENE can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEAN B. FLEURANTIN/  
Primary Examiner, Art Unit 2162